IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1462 OF 1984
To
FIRST APPEAL No. 1464 of 1984
With
FIRST APPEAL NO. 1059 OF 1985
To
FIRST APPEAL No. 1062 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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NEW INDIA ASSURANCE CO.LTD. - Appellant(s)
Versus
LILAVATIBEN A. SHAH & ORS. - Respondent(s)

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Appearance :

First Appeal Nos.1462 to 1464 of 1984
Shri Rajni Mehta for Appellant(s).
None for Respondent(s) : 1 - 5, 7 though served.
Ms. Jyoti Mehta for Respondent(s) : 6,
Ms. Manisha Lavkumar, AGP for Respondent(s) : 8.

First Appeal Nos.1059 to 1062 of 1985
Ms. Jyoti Mehta for Appellant(s).
Shri Rajni Mehta for Insurance Company.
Ms. Manisha Lavkumar, AGP for State Government.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 02/08/2007

COMMON ORAL JUDGMENT

1. The New India Assurance Company Limited, being aggrieved by part of the awards made by the learned Motor Accident Claims Tribunal (Main), Ahmedabad (Rural), has filed First Appeal Nos.1462 of 1984 to 1464 of 1984, submitting *inter alia* that the liability of the passenger-cum-employee was not covered under the policy, therefore, they were required to be exonerated.

First Appeal Nos.1059 of 1985 to 1062 of 1985 have been filed by the Gujarat State Road Transport Corporation, being aggrieved by the four awards made by the learned Claims Tribunal in M.A.C.P. No.635 of 1981, 636, 1981, 644 of 1981 and 310 of 1982, with a submission that the learned Tribunal was unjustified in holding the driver of the bus guilty to the extent of 50%.

2. In the matter of ***New India Assurance Company Limited vs. Thakor Bhemaji Ganeshji*** [***1993 (2) G.L.R. 1051***], the Full Bench of this Court has held that if an employee is travelling in the insured vehicle, then, the liability of the Insurance Company would arise, but, it would be limited to the extent of Rs.50,000/-. Under the circumstances,

in each of three appeals, being First Appeal Nos.1462 of 1984 to 1464 of 1984, it is hereby directed that the liability of the Insurance Company would be limited to the extent of Rs.50,000/- only. Accordingly, the said three appeals are disposed of.

3. So far as other four appeals at the instance of the Gujarat State Road Transport Corporation are concerned, the learned Counsel for the appellant, after taking me through the records and the findings recorded by the learned Tribunal below, submitted that the facts would clearly show that the Jeep driver was coming at a very fast speed, he took a circular turn and in that drive, he came more towards his right, i.e. on the wrong side, and the driver of the bus, despite his best efforts, could not avoid the accident. It is submitted that the driver of the jeep was negligent to the extent of 75%.

4. The claimants have been examined in the present matter, the driver and the co-passengers have stated that the jeep was being driven moderately, the driver of the bus was rash and negligent and despite best efforts on the part of the jeep driver, the accident could not be avoided and the bus dashed against the rear portion/hood of the jeep. It is also to be noted that the driver of the State Transport bus or any passenger travelling in the said bus has not been examined. The conductor, who does not say that he was sitting next to the driver,

simply said that he had witnessed the accident. According to the said conductor, the driver of the jeep was rash and negligent and he was solely responsible for the accident.

5. In the opinion of this Court, the statement of the conductor that the driver tried to apply the brakes or tried to avert the accident, could not be stated by him because those were the facts within the personal knowledge of the driver. Even otherwise, it would clearly appear that if the driver of the jeep was trying to avoid the accident, then, there was no reason for the bus driver to hit at the rear end of the jeep.

6. The learned Tribunal below has given reasonable reasons for holding that each of the drivers was negligent to the extent of 50%. Being in general agreement with the findings recorded by the learned Tribunal below, I hold that each of the drivers was negligent to the extent of 50%. All the appeals filed by the Gujarat State Road Transport Corporation deserve to and are, accordingly, dismissed. No costs.

7. Shri Rajni Mehta, learned Counsel, submitted that in First Appeal No.1462 of 1984, the appellant-Insurance Company had deposited a sum of Rs.62,500/- towards 50% of the claim amount and the same has been withdrawn by the claimants. Therefore, the appellant is entitled to recover back the said amount with interest either from the

claimants or from the Government.

8. As the money has already been withdrawn by the claimants and any amount beyond the liability of Rs.50,000/- will have to be borne by the State Government, I permit the appellant-Insurance Company to recover the amount, which they had deposited beyond Rs.50,000/-, with interest at the rate of 6% per annum from the date of deposit till the date of recovery from the State Government.

[R.S.Garg, J.]

*kamlesh**